

REMARKS

By Official Action mailed March 17, 2005, restriction to one of the following inventions is required:

Group I. Claims 1-9, drawn to wrapping machine.

Group II. Claims 10-15, drawn to top foil wrapping machine.

In response, Applicants hereby elect Group I, upon which claims 1-9 and new claim 16 are readable.

The election was made with traverse because the Examiner's Restriction Requirement is improper. More specifically, the Examiner alleged that the inventions of Groups I and II are unrelated because the invention as defined by the claims of Group II neither recites nor requires the invention as defined by the claims of Group I. Applicants respectfully disagree.

First, the Examiner is kindly asked to cite legal authority for the argument highlighted above and found in the Office Action, at page 2, lines 8-12.

Second, the Restriction Requirement is improper because the Examiner has not applied the proper test. It should be noted that MPEP, at sections 806.04 and 808.01 cited in the Restriction Requirement, states that inventions are considered unrelated if it can be shown that

- (i) they are not disclosed as capable of use together and
- (ii) they have different modes of operation, different functions or different effects.

Thus, the test for unrelatedness of one invention to another does not require the Examiner to consider whether the invention as defined by the claims of one Group recites or requires the invention as defined by the claims of the other Group. Rather, the proper test for unrelatedness

requires that the Examiner's reason for insisting upon restriction meet both prongs (i) and (ii) mentioned above. The Examiner's Restriction Requirement has failed to meet any of the prongs.

Third, Applicants respectfully submit that at least first prong (i) cannot be met because the inventions of groups I and II, i.e., a wrapping machine and a top foil wrapping machine, respectively, can clearly be used together to completely wrap an object to be packaged. Therefore, the inventions of Groups I and II are not unrelated, contrary to the Examiner's allegation.

Fourth, the Restriction Requirement is improper because the search and examination of the entire application can be made without serious burden. Inventions I and II are closely classified, by the Examiner, in the same class (i.e., 53) and adjacent sub-classes (i.e., 588 and 589). Therefore, both Inventions I and II can be covered in a single search without serious burden on the Examiner.

In view of any of the above arguments, withdrawal of the Restriction Requirement and consideration of all claims pending in the instant application are believed appropriate and therefore courteously solicited.

The original claims have been amended to improve claim language. New claim 16 has been added to provide Applicants with the scope of protection to which they are believed entitled. New claim 16 is directed to a wrapping machine (see the preamble of new claim 16), and is broader than elected claim 1 (see the claim body of new claim 16). Therefore, claim 16 is readable on the elected invention and should be examined with the elected claims.

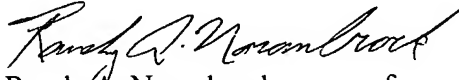
Early examination on the merits is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including

extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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